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## VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: EX PARTE PRESENTATION  
CC Docket No. 96-45 Federal-State Joint Board on Universal Service

Dear Ms. Dortch:

This letter is submitted on behalf of TracFone Wireless, Inc. (TracFone) in response to the Ex Parte Presentation filed by CTIA - The Wireless Association®, on January 25, 2006 in the above-captioned docket. In its filing, CTIA notifies the Commission of its recent decision to abandon its long-held support for continuation of a revenues-based Universal Service Fund (USF) contribution methodology and states that it now favors a numbers-based and capacity-based USF contribution methodology.

TracFone is the nation's leading provider of prepaid wireless telecommunications service. It currently serves more than five million customers. TracFone is a member of CTIA. However, TracFone is fundamentally opposed to the proposal set forth in CTIA's filing. Lest there be any misunderstanding, the position articulated by CTIA does not reflect the views of the entire wireless industry. In fact, CTIA's proposal is antithetical to the interests of prepaid wireless providers, including those who are CTIA members, and, more importantly, would result in a substantial increase in the USF assessments imposed upon the many low volume, low income consumers who rely upon prepaid services for obtaining affordable wireless service. This is so notwithstanding CTIA's wholly-unsupported and unsupportable claim that its plan would "ensure that no consumer group is unfairly advantaged or disadvantaged . . . ." <sup>1</sup>

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<sup>1</sup> Letter to Marlene H. Dortch, Secretary, FCC, from Paul Garnett, CTIA, dated January 25, 2006.

Since the commencement of the contribution methodology proceeding in 2002, TracFone has consistently and unwaveringly favored retention and refinement of a revenues-based contribution methodology and has opposed proposals to assess universal service contributions based either on network connections or working telephone numbers. As described more fully in TracFone's numerous comments and ex parte letters, it has opposed those alternatives on legal as well as public policy grounds. Until January 26, 2006, that had been CTIA's public position as well.

If the Commission elects to replace the revenues-based USF contribution methodology with one based on working telephone numbers, TracFone respectfully asks the Commission to acknowledge that such a system would produce unintended adverse consequences for some prepaid wireless providers and their consumers, and urges the Commission to allow such providers to continue to base their USF contributions on interstate revenues. As explained by TracFone in an ex parte letter filed on October 21, 2005, even if the Commission were to adopt a numbers-based methodology, there will be a need to have alternative contribution methodologies in place since some providers of interstate telecommunications service do not assign working telephone numbers as part of their services.<sup>2</sup> For example, providers of prepaid wireline calling card services do not assign telephone numbers to their customers as part of their services. Section 254(d) of the Communications Act requires that "[e]very telecommunications carrier that provides interstate telecommunications service shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." In order to ensure compliance with Section 254(d), there must be contribution mechanisms established which are appropriate for all providers, including those who do not assign telephone numbers, and including those for whom a numbers-based contribution methodology would produce USF contribution levels which are not equitable and non-discriminatory.

A working telephone numbers-based contribution methodology is not appropriate either for prepaid wireline calling card providers or for prepaid wireless carriers. Of far greater importance than the fact that prepaid wireline companies, unlike prepaid wireless providers, do not assign telephone numbers is the fact that neither prepaid wireline carriers nor prepaid wireless carriers have any opportunity to recover their USF contribution costs from their consumers in billed surcharges. There is no question that the USF is intended to be based on end user revenues. There is also no question that the standard industry practice (except for the prepaid segments of the industry) is to impose USF cost recovery charges on end users as line item surcharges on customer bills -- a practice which has long been permitted by the Commission, but which is not available to prepaid providers, either wireline or wireless. Indeed, maintenance of the ability to recover USF

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<sup>2</sup> CTIA acknowledges that there will be a continuing need for certain types of carriers to continue to have their USF assessments based on interstate revenue. See "A Fair Numbers -- and Capacity-Based Universal Service Contribution Methodology" (CTIA Presentation) at 7.

contribution costs from end users as flow through charges on consumer bills is a central tenet of CTIA's proposal.<sup>3</sup>

CTIA's purported "solution" to the unique circumstances of prepaid wireless providers would be to "discount" the per number monthly charge by 50%.<sup>4</sup> Conspicuously absent from the CTIA presentation is any explanation of a rationale for its suggested 50% discount. As TracFone has indicated in previous filings, it contributes to the USF based on its actual interstate usage revenues. Unlike some wireless carriers, it does not rely on the Commission's 28.5% safe harbor to secure for itself a discount on its USF contributions below what it would owe based on its actual interstate revenues. Based on its customers' actual interstate usage, TracFone's USF contributions are approximately \$0.06 per customer per month. TracFone contributes 10.2 percent of its interstate revenues to the USF -- the exact amount it is required to contribute based on the Commission's current USF contribution factor. A \$1.00 per number surcharge would increase TracFone's USF costs more than sixteen fold. Rather than contributing 10.2 percent of its interstate revenues to the USF, TracFone would be forced to contribute nearly 100 percent of its interstate revenues to the USF. Viewed another way, it is generally recognized that the monthly Average Revenue per User ("ARPU") for prepaid services is well below that for post-paid services. Industry analysts estimate that ARPU for the post-paid market segment is \$56.00 per month.<sup>5</sup> TracFone's ARPU is \$14.00 per month. A CTIA member who provides post-paid services and has a \$56.00 monthly ARPU who reports interstate revenue using the 28.5% safe harbor would contribute \$1.63 per customer per month to the USF ( $\$56 \times .285 \times .102$ ). Assuming a \$1.00 per working telephone number per month USF charge, that CTIA member would enjoy a reduction in its per customer USF contribution of about \$0.63 per month. In contrast, TracFone, whose current monthly contributions are based on its actual interstate revenues (not revenues artificially reduced by the safe harbor), would see more than an eight fold increase in its monthly per customer USF contribution from \$0.06 to \$.50. CTIA has not explained how a proposal which would increase one of its members' USF costs by more than 800% while reducing other members' USF costs by about forty percent (*i.e.* from \$1.63 to \$1.00) would be equitable and non-discriminatory -- as required by Section 254(d).

CTIA has offered the Commission a simplistic "one size fits all" approach to USF contributions. In reality, one size does not fit all. For some prepaid providers, a 50% discount below the standard per number charge might approximate those providers' contribution levels under the current methodology. For others, such as TracFone, the CTIA proposal would dramatically and unnecessarily raise their costs of operation, would require such providers to increase their service prices to consumers, or possibly force those providers to exit the market.

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<sup>3</sup> CTIA Presentation at 7 ("Contributors should continue to have flexibility to recover contribution costs from their end-user customers (*e.g.*, through line-items)).

<sup>4</sup> CTIA Presentation at 5.

<sup>5</sup> See, *e.g.*, US Wireless Services Matrix 3Q 05, published by Merrill Lynch, Table 17 (Monthly Average Revenues Per User Including Roaming Revenues). That Merrill Lynch report indicates that the weighted average ARPU for 3rd quarter 2005 was \$56.00.

More importantly, CTIA's proposal would impose a disproportionate share of funding the USF on those consumers who can least afford that burden -- low income, low volume users, including the elderly, students, military personnel, economically disadvantaged minorities, recent immigrants, and others. It is for that reason that the Keep USF Fair Coalition -- a public interest coalition whose members include numerous consumer groups representing a broad segment of the consuming public, has vigorously opposed a numbers-based USF contribution methodology. That opposition is not surprising. Those groups' memberships are comprised of ordinary residential consumers who make relatively few interstate calls from their wireless phones (in many cases, they make no interstate calls). CTIA's proposal would require that a consumer who spends \$14.00 or less per month on prepaid wireless service (most or all of which is used for local calling) be assessed an additional \$0.50 per month (assuming a "discounted" per number charge of \$0.50), whereas a large corporate customer whose ARPU may be three to five times that level -- or more -- would be assessed \$1.00. The suggestion that such a plan would not disadvantage any consumer group defies credulity, and explains why the consuming public has been so adamant in opposing a numbers-based contribution plan -- with or without a "discount."<sup>6</sup>

In its ex parte presentation, CTIA states that assessments should not be regressive.<sup>7</sup> However, it is difficult to imagine any assessment methodology which would be more regressive than one which imposes the same monthly burden on the lowest income lowest volume users as it does on the most affluent highest volume users. CTIA's arbitrarily-chosen 50% "discount" would do little to limit that regressivity.

In its ex parte presentation, CTIA echoes the Chicken Little fears previously articulated by other numbers-based methodology proponents: the interstate revenue-driven contribution base is declining, and IP-enabled and other services are eroding jurisdictional boundaries. Such assertions are long on rhetoric and short on fact. Available data indicate that interstate revenues are stable. Whether or not interstate revenues of specific carriers are declining, overall interstate revenues are not declining. Indeed, the Commission's three year old arbitrary 28.5% wireless safe harbor undoubtedly keeps the contribution base below what it would be if actual interstate revenues were used. Neither should the existence of IP-enabled services, such as Voice over the Internet Protocol, cause a reduction in assessable revenues. VoIP services are market substitutes for other telecommunications calling services and there is no legal or public policy reason why they should not bear the same responsibility for supporting the USF as the services with which they compete, or that revenues earned from those calling services should not be subject to the same USF contribution obligations as revenues earned from other calling services.

In conclusion, nothing in CTIA's ex parte presentation provides any justification for implementing a numbers-based contribution methodology. However, if the Commission chooses to impose such a methodology, it should retain a revenues-based contribution methodology for those

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<sup>6</sup> To date, more than 500,000 letters from such consumers opposing any numbers-based plan have been filed in this docket. Apparently, more than one-half million citizens do not share CTIA's view that consumers would not be unfairly disadvantaged.

<sup>7</sup> CTIA presentation at 4.

categories of service providers, including prepaid wireless, which do not have the opportunity to recover the costs of their contributions through periodic surcharges billed to end users. For such providers, a numbers-based methodology with or without a "discount" would produce contribution obligations which are not equitable and non-discriminatory as required by the Communications Act. Alternatively, TracFone suggests that if the Commission adopts a numbers-based USF contribution methodology, it should do so in a manner which caps the contribution levels of providers who would be adversely impacted by that methodology, including prepaid wireless providers, at the levels which those providers contribute under the current revenues-based methodology.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically in the above-captioned docket. Please direct any questions regarding this letter to undersigned counsel for TracFone.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Brecher', with a long horizontal line extending to the right.

Mitchell F. Brecher  
*Counsel for TracFone Wireless, Inc.*

cc: The Honorable Kevin Martin  
The Honorable Michael Copps  
The Honorable Jonathan Adelstein  
The Honorable Deborah Tate  
Mr. Thomas Navin  
Ms. Dana Shaffer  
Mr. Marcus Maher  
Mr. Jeremy Marcus  
Ms. Narda Jones  
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